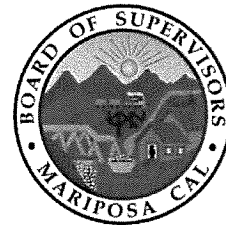




MARIPOSA COUNTY

Administration • 966-3222



RESOLUTION - ACTION REQUESTED 2019-379

MEETING: July 2, 2019

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Agreement for Agricultural Commissioner / Sealer Services with Merced County

RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement with Merced County to Provide Agricultural Commissioner / Sealer of Weights and Measures Services (\$144,960); and Authorize the Board of Supervisors Chair to Sign the Agreement.

The Mariposa County Department of Agriculture/Weights and Measures is responsible for several vital county functions including monitoring, maintaining and enforcing standards for agricultural plant health, weed prevention and management, pest prevention, animal health, food safety and measurement standards. The agricultural commissioner position is one of a small handful mandated by state code and held to strict state licensing requirements.

After recruiting efforts were unsuccessful, the Board approved a Memorandum of Understanding (MOU) with Merced County to provide vital agricultural commissioner and weights and measures services last year. This MOU effectively renews that agreement with an increase of \$5,760 to help cover Merced cost of living increases for the staff engaged in Mariposa.

It is the stated goal of the Board of Supervisors to find and appoint a local agricultural commissioner. As executive salaries are evaluated and possibly revised in the coming months, both parties to this agreement anticipate a recruitment effort. This MOU can be terminated prior to the end of the term if such an effort is successful.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Mariposa County contracted for many years with the commissioners in Stanislaus or Madera Counties for agricultural commissioner / sealer of weights and measures services. Doing so provided an opportunity for an internal candidate to achieve the appropriate licensing and eventually be appointed as the commissioner and sealer for the County.

The Board approved Resolution 2018-280 on June 12, 2019, which appointed the

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Merced County Agricultural Commissioner/Sealer of Weights and Measures to the same position in Mariposa County.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve the agreement. Staff will seek direction to recruit for an agricultural commissioner / sealer of weights and measures.

FINANCIAL IMPACT:

Appropriate funds are included in the Agricultural Commissioner account of the General Fund requested budget for FY20

ATTACHMENTS:

FY20 Merced Agriculture MOU (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Marshall Long, District III Supervisor

SECONDER: Merlin Jones, District II Supervisor

AYES: Merlin Jones, Marshall Long, Kevin Cann, Miles Menetrey

EXCUSED: Rosemarie Smallcombe

MEMORANDUM OF UNDERSTANDING FOR AGRICULTURAL COMMISSIONER/SEALER OF WEIGHTS AND MEASURES SERVICES

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 25th day of June, 2019, by and between the County of Mariposa, a political subdivision of the State of California, ("MARIPOSA"), and the County of Merced, a political subdivision of the State of California, ("MERCED"), is made upon the following considerations:

WHEREAS, the Agricultural Commissioner/Sealer of Weights and Measures for MARIPOSA has retired and MARIPOSA has previously conducted recruitments for the position without success; and

WHEREAS, MERCED and MARIPOSA desire a mutually beneficial relationship for MERCED to provide additional Commissioner/Sealer services to MARIPOSA on a temporary basis in order for MARIPOSA to meet the requirements of the California Department of Food and Agriculture (CDFA);

NOW, THEREFORE, MERCED AND MARIPOSA mutually agree to the following:

1. TERM

The term of this MOU shall commence on July 1, 2019, and terminate on June 30, 2020, unless extended as provided by this MOU.

2. SERVICES

MERCED shall perform Commissioner/Sealer services as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference.

3. COMPENSATION

- a. MARIPOSA shall pay MERCED as compensation for Commissioner/Sealer services a flat rate payment of \$12,080.00 per month for each month and any part of which the services described herein are provided. This amount will be paid no later than the last business day of the month following the month in which the services were provided.
- b. The total payments to be made by MARIPOSA to MERCED under this MOU shall not exceed \$144,960.00 unless extended as provided by this MOU.

4. RELATIONSHIP OF PARTIES

MERCED and MARIPOSA are separate subdivisions of the State of California and are independent contractors with respect to each other. This MOU is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. Nothing in this MOU shall be construed to create an employment relationship between MARIPOSA and any employee of MERCED, or between MERCED and any employee of MARIPOSA. Each Party shall be solely responsible for the

acts or omissions of its officers, agents, employees, and subcontractors. Neither Party's employees shall be entitled to any employee benefits from the other Party.

5. AUTHORITY OVER PERSONS PROVIDING SERVICES

Authority to direct the duties and functions of MERCED employees providing services, supplies and information to MARIPOSA as required by this MOU shall continue to reside with MERCED. It is mutually understood and agreed that MERCED employees assigned to provide services, supplies or information to MARIPOSA as required by this MOU shall be acting as MERCED employees. MERCED agrees to require its department heads and employees to respond in a timely manner to requests from MARIPOSA for services and information related to this MOU.

6. MUTUAL INDEMNIFICATION

- a. Merced agrees to indemnify, defend and hold harmless Mariposa County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with services rendered by Merced County. Mariposa agrees to indemnify, defend and hold harmless Merced County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with services rendered by Mariposa County.
- b. Each Party shall indemnify, defend, and hold harmless the other Party for the payment of any employee and/or employer contributions for CalPERS benefits, or the payment of any penalties and interest on such contributions, on behalf of the other or any employees, agents, or subcontractors required to perform tasks pursuant to this MOU.

7. INSURANCE COVERAGE

Without limiting the Parties' indemnification obligations provided for herein, each Party will maintain in full force and effect, at its own expense, comprehensive general liability and property damage insurance, comprehensive automobile insurance, workers' compensation and professional liability insurance throughout the term of this MOU.

8. DISPUTE RESOLUTION

Disputes between MERCED and MARIPOSA in connection with any matter relating to the terms or provisions of this MOU shall first be considered jointly by the County Executive Officer of MERCED and the County Administrative Officer of MARIPOSA.

Prior to taking any judicial action to interpret or enforce provisions of this MOU, the Parties agree to first submit the matter to a mediator, to be mutually agreed upon by the Parties hereto, in concert with a representative of each Party.

However, pending resolution, the existence of any dispute (except for disputed charges for which notice was timely provided as required herein) will not absolve either Party of the responsibility for making timely payments for provided services nor will such disputes absolve either Party of the responsibility for timely performance of its agreed upon services to the other.

9. RECORD RETENTION AND INSPECTION

- a. Each Party agrees to timely prepare accurate and complete financial and performance records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this MOU, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.
- b. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of either Party, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. Each Party hereby agrees to make such records available during normal business hours for inspection, audit and reproduction by any duly authorized agents of the State of California or the federal government. Each Party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or the federal government. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this MOU, including the costs of administering this MOU.

10. DISCONTINUANCE OF SERVICES

In the event notice is given by MERCED that a service, in whole or in part, will no longer be provided, or notice is given by MARIPOSA that a certain service will no longer be utilized, MARIPOSA shall pay for all services utilized up to the date of termination of the services.

11. STRICT COMPLIANCE

The failure of either Party to insist on strict compliance with any provision of this MOU shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either Party of either performance or payment shall not be considered a waiver of any preceding breach of the MOU by the other Party.

12. COMPLIANCE WITH LAWS

Both Parties hereto agree to observe and comply with all applicable local, state, and federal laws and regulations. Both parties further agree to comply with all applicable local, state and federal licensure and certification requirements at all times during the term of this MOU.

13. SEVERABILITY

This MOU is subject to all applicable laws and regulations. If any provision of this MOU is found by any court or other legal authority, or is agreed upon by the Parties to be in conflict with any code or regulation, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of this MOU to either Party is lost, this MOU may be terminated at the option of the affected Party. In all other instances, the remainder of this MOU shall remain in full force and effect.

14. TERMINATION AND RIGHTS UPON TERMINATION

This MOU may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this MOU, MERCED shall immediately be paid all fees earned as of the effective date of termination.

Either party may terminate this MOU for convenience upon thirty (30) calendar days' written notice to the other party. Upon termination for convenience, MERCED shall be entitled to compensation for services performed acceptably up to the effective date of termination.

Should MERCED default in the performance of this MOU or materially breach any of its provisions, MARIPOSA, at its option, may terminate this MOU by giving written notification to MERCED. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this MOU shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of MARIPOSA property, dishonesty, or theft.

15. NOTICES

Any notice required to be given pursuant to the terms and provisions herein shall be in writing and shall be sent by First Class Mail to:

County of Merced
County Executive Officer
2222 M Street
Merced, CA 95340

County of Mariposa
County Administrative Officer
5100 Bullion Street, 2nd Floor
Post Office Box 784
Mariposa, CA 95338

16. AMENDMENT

No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the Parties.

17. BINDING EFFECT

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the Parties and to each of their heirs, executors, administrators, successors and assigns.

18. INTERPRETATION

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

18. FORCE MAJEURE

Neither Party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such Party and without fault or negligence of such Party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

19. ENTIRE AGREEMENT

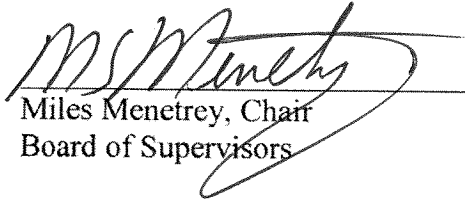
This MOU shall constitute the entire agreement between the Parties regarding the subject matter of this MOU, and shall supersede any previous agreements, promises, representations, understandings or negotiations, whether oral or written, concerning the same subject matter.

20. AUTHORITY TO EXECUTE


Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each Party represents and warrants to the other that the execution of delivery of this MOU and the performance of such Party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the Parties hereto have entered into this MOU as of the day and year first written above:


COUNTY OF MARIPOSA


Miles Menetrey, Chair
Board of Supervisors


ATTEST:


Rehe LaRoche
Clerk of the Board

APPROVED AS TO FORM:


Steven W. Dahlem
County Counsel

COUNTY OF MERCED


Lloyd Pareira, Chairman JUN 18 2019
Board of Supervisors

APPROVED AS TO LEGAL FORM:

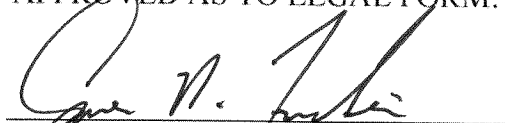

James N. Fincher
County Counsel

Exhibit A
SCOPE OF WORK

MERCED agrees to provide Agricultural Commissioner/Sealer of Weights & Measures services sufficient to meet the requirements of the California Department of Food and Agriculture (CDFA). These services include, but are not limited to, the following:

- a. Supervisory and administrative oversight of the Mariposa County Department of Agriculture/Weights & Measures including the planning, organization and administration of all department operations; general oversight, guidance, mentoring, and direction to County staff in the performance of both agricultural and weights & measures program activities; and recommendations to the Board of Supervisors on issues related to agriculture and/or the advancement of the department.
- b. Perform all field work including required reports, invoicing, budgets and work plans as required. Provide guidance and answer questions for the completion of tasks assigned to County staff.
- c. Review and evaluate the work of County staff.
- d. Review and sign payroll certificates, monthly claim forms and other documents requiring a department head signature.
- e. Serve as the Mariposa County representative to the local farm bureau, for contracts and agreements with CDFA, and to other relevant agencies.
- f. Provide a licensed deputy agricultural commissioner or agricultural commissioner to be present in the Mariposa County Agricultural Department office to direct staff and address community issues an average of three (3) times per week and no less than twice (2) in any given week.
- g. All other duties commonly required of a county agricultural commissioner.

MARIPOSA agrees to facilitate appropriate purchasing and other county processes and to provide sufficient resources to complete the tasks required herein.